IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.634 OF 2006

In

ARBITRATION PETITION NO.355 OF 2004

Union of India : Appellant

(Orig. Petitioner)

V/s.

M/s.Arctic India : Respondent

(Orig.Respondent)

...

Mr.S.R.Rajguru i/b. Dr.T.C.Kaushik for the appellant.

Mr.Sudip Sen i/b. M/s.DSK Legal for the respondent.

...

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 8, 2006.

P.C.

We heard the counsel for the parties.

2. The appeal is admitted and taken up on board for final hearing at this stage.

3. M/s.DSK Legal waives service for the respondent.

4. In the Arbitration Petition filed by the present

appellant, the challenge was made to the award made in favour of the respondent and also the rejection of the part of counter claim made by the appellant. The appellant in the petition set out the grounds which, according to them, did not justify any award in favour of the respondent. However, by the impugned order in a very cryptic manner, the learned Single Judge disposed of the Arbitration Petition. This is what the learned single Judge said while disposing of the petition:-

> "It is an admitted position that the issues raised in the present petition are clearly covered by the order and judgment in Arbitration Petition 354 of 2004 save and except the contention that the counter claim/deductions allowed by the arbitrator is less than what was claimed by the petitioner before the Arbitrator.
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> 2. In so far as the last contention is concerned that the learned arbitrator has allowed less amount than what was claimed by the petitioner as and by way of deduction and/or counter claim. I am of the opinion that the provisions of section 34 does not cover any such inquiry into the quantum of claim granted or quantum of claim rejected. This is an issue which is essentially a finding of fact and on the material and evidence before the Arbitrator he has arrived at the figure. It is not possible for me in exercise of jurisdiction under section 34 to rework out the figures and arrive at the figures of counter claim or deductions. In this view of the matter, there is no substance in the contention raised by the petitioner. Petition is accordingly dismissed. There shall be no order as to costs."

5. The impugned order clearly reflects that the issues

raised in the petition were pressed before the learned single Judge. However, the learned single Judge brushed aside all those issues by saying that they were covered by the order and judgement in Arbitration Petition no.354 of 2004, save and except the contention relating to counter claim/deductions which were allowed less by the Arbitrator than claimed by the appellant. The order does not show as to how various issues raised in the Arbitration Petition concerning claim awarded in favour of the respondent were covered by the order and judgement in Arbitration Petition no.354 of 2004. In the circumstances, we are unable to sustain the impugned order.

6. We, accordingly, allow the appeal and set aside the order dated 1.12.2004 and restore Arbitration Petition no.355 of 2004 to file of the learned single Judge for fresh hearing and disposal.

7. We request the learned single Judge to expedite the hearing of the Arbitration Petition. Liberty is granted to the Advocates for the parties to apply to the learned single Judge for fixing the date in the matter.

R.M. LODHA, J.

S.A. BOBDE, J.